

REMARKS

I. Introduction

Claims **1-26** are currently pending in the present application. Claims **1, 5, and 24-26** are independent. All claims stand rejected. In particular:

(A) claims **1, 3-9, 11-13, and 21-22** stand rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the written description requirement;

(B) claims **1, 5, 19, and 24-26** stand rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite; and

(C) claims **1-17 and 19-26** stand rejected under 35 U.S.C. §102(e) as being allegedly anticipated by U.S. Patent No. 6,720,990 (hereinafter “Walker”).

Upon entry of this amendment, which is respectfully requested, claim 18 will be amended solely to re-write claim 18 in independent form, claims **1-17 and 19-26** will be cancelled without prejudice or disclaimer, and new claims **27-65** will be added. No new matter is introduced by this amendment.

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.112.

II. Claim 18

Initially, Applicants respectfully note that claim **18** stands solely rejected on §112 grounds and that no prior art rejection of claim **18** has been set forth by the Examiner. Upon traversal of the §112 grounds for rejection applicable to claim **18** and the previous parent claim thereof (claim **1**), therefore (since claim **18** is now written in independent form incorporating all the limitations of the previous parent claim), claim **18** should be allowed. Applicants further respectfully note that any new grounds for rejection of claim 18, particularly any new prior art grounds for rejection, cannot have been necessitated by the amendment herein that simply re-writes claim **18** in independent form. Accordingly, any new action that sets forth such a new ground for rejection should be non-final.

III. The Examiner's Rejections

A. 35 U.S.C. §112, first paragraph

Claims **1**, **3-9**, **11-13**, **18**, and **21-22** stand rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the written description requirement. This ground for rejection is moot with respect to claims **1**, **3-9**, **11-13**, and **21-22** that are cancelled herein. As claim **18** is re-written herein in independent form to incorporate all limitations of the previous parent claim (claim **1**), however, Applicants therefore respectfully traverse this ground for rejection with respect to claim **18** and with respect to the limitations of claim **1**, as applicable to independent claim **18**, as follows.

1. Presumption of Adequate Written Description

Applicants initially and respectfully note that a “**description as filed is presumed to be adequate**, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971).” MPEP §2163 III.A.; emphasis added. In fact, “[t]here is a **strong presumption** that an adequate written description of the claimed invention is present when the application is filed. *In re Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976).” MPEP §2163 I.A.; emphasis added.

Accordingly, “[t]he **examiner has the initial burden** of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.” MPEP §2163 III.A.; emphasis added.

In rejecting a claim, **the examiner must set forth express findings of fact** regarding the above analysis which support the lack of written description conclusion. These findings should:

(A) Identify the claim limitation at issue; and

(B) Establish a prima facie case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of “unpredictability in the art” is not a sufficient reason to support a rejection for lack of adequate written description.

MPEP §2163 III.A; emphasis added.

2. Detail of Well-Known Terms Not Required

Applicants also respectfully note that “[t]he absence of definitions or details for well-established terms or procedures should not be the basis of a rejection under 35 U.S.C. 112, para. 1, for lack of adequate written description.” MPEP §2163 II.A.1. “Information which is well known in the art need not be described in detail in the specification. See, e.g., *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379-80, 231 USPQ 81, 90 (Fed. Cir. 1986).” MPEP §2163 II.A.2. Indeed, “[i]f a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, e.g., *Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating “the description need not be in *ipsis verbis* [i.e., “in the same words”] to be sufficient”).” MPEP §2163 II.A.3.(a).

3. Required Factual Determinations

Applicants further respectfully note that determination of “[w]hether the specification shows that applicant was in possession of the claimed invention is not a single, simple determination, but rather **is a factual determination reached by considering a number of factors.**” MPEP §2163 II.A.3.(a).(i).; emphasis added.

The factors outlined in MPEP §2163 as being necessary to consider in formulation of a *prima facie* case of lack of written description include:

1. level of skill and knowledge in the art;
2. partial structure;
3. physical and/or chemical properties;
4. functional characteristics alone or coupled with a known or disclosed correlation between structure and function; and
5. the method of making the claimed invention.

4. The Examiner's Case as Set Forth

The Examiner states, with respect to claim **1**, that because the term “first user” recited by claim **1** is not “defined within the specification”, the claims contain “subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.” Office Action, pg. 2, bullet 4.

The Examiner also states, with respect to claim **18**, that because the choices of responses “human is present”, “no human is present”, and “uncertainty [sic] a human is present” are not within the specification, and that “the specification is silent what specifying the types of responses a monitor can provide” (Office Action, pg. 3, second paragraph), the subject matter is therefore not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. The Examiner Has Failed to Set Forth a *Prima Facie* Case

Applicants note that the Examiner has failed to set forth *any* evidence supporting the conclusion that one of ordinary skill in the art would not have understood the inventor to be in possession of the claimed invention at the time of filing. Nor has the Examiner provided any findings regarding the factors required by MPEP §2163.

Further, even if the Examiner had set forth some amount of evidence supporting the allegation that Applicant's specification lacked written description for the terms “first user”, “an indication that a human is present in the image”, “an indication that no human is present in the image”, or “an indication of uncertainty whether a human is present in the image”, since each of such terms is present in the specification as filed (*e.g.*, at least in claims **1** and **18** as originally filed), there exists a “**strong presumption**” that the specification meets the written description requirement. Accordingly, the Examiner's burden of proof is heightened with respect to the terms “first user”, “an indication that a human is present in the image”, “an indication that no human is present in the image”, and “an indication of uncertainty whether a human is present in the image”. Since *absolutely no evidence* has been provided by the Examiner, this heightened burden of proof has certainly not been met.

Further yet, since the terms “first user”, “an indication that a human is present in the image”, “an indication that no human is present in the image”, and “an indication of uncertainty whether a human is present in the image” are very simplistic terms of art that are immediately recognizable and understandable, at least upon reading Applicants’ disclosure as filed, the specification need not contain a detailed description of these terms to satisfy the written description requirement. In other words, the statement “first user”, “an indication that a human is present in the image”, “an indication that no human is present in the image”, or “an indication of uncertainty whether a human is present in the image”, without more, is believed by Applicants to be of well-known nature to one of ordinary skill in the art at the time of the invention.

Applicants also respectfully reiterate (from Applicant’s previous response) that a “user” may be equivalent to a “Guardian” (e.g., “a Guardian’s user device”), as the terms are utilized in the claimed embodiments, and that ‘a plurality of’, ‘at least one’, ‘one or more’, and ‘a minimum number of’ “Guardians” are described throughout Applicants’ specification as filed (which necessarily implies at least first and second Guardians/users). Applicants also note that the term “Guardian” need not appear in the claim itself to provide written description support for the term “first user” recited in the claim.

Applicants also respectfully note that, despite the Examiner’s statement that “the specification is silent what specifying the types of responses a monitor can provide”, Applicants’ specification as filed is replete with examples of the types of response that may be provided. Such response may include, for example, indications that a human is present, that a human is not present, that a problem exists, that a problem does not exist, that a violation exists, that no violation exists, etc. No reading of Applicants’ specification could fail to uncover the many exemplary types of responses described therein.

At least for these reasons, the Examiner has simply and entirely failed to establish a *prima facie* case for lack of written description, and the §112, first paragraph ground for rejection should therefore be withdrawn with respect to claim **18**, as re-written in independent for to incorporate the limitations of claim **1** (now cancelled).

B. 35 U.S.C. §112, second paragraph

Claims **1, 5, 19, and 24-26** stand rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite. This ground for rejection is moot with respect to claims **1, 5, 19, and 24-26** that are cancelled herein. As claim **18** is re-written herein in independent form to incorporate all limitations of the previous parent claim (claim **1**), however, Applicants therefore respectfully traverse this ground for rejection with respect to the limitations of claim **1**, as applicable to independent claim **18**, as follows.

The Examiner states that the term “substantially”, recited by claim **1**, is a relative term that renders claims **1** indefinite. Applicants traverse this ground for rejection as follows.

Applicants respectfully note that it should be quite clear from Applicants’ disclosure as filed that “an area in which human activity is desired to be substantially nonexistent” is descriptive of an area in which humans are not usually supposed to be (e.g., perimeters of nuclear power facilities or near or in the water of a public water supply). While members of the public are not supposed to be in such places, for example, there may occasionally be authorized personal in such areas. There is no evidence on the record that such a simple concept would fail to apprise one of ordinary skill in the art of the scope of the claimed embodiment.

The Examiner also states that a definition of the term “entity”, recited by claim **1**, is not provided, and that this term could refer to a person or a machine.

Applicants respectfully note that definitions for terms, particularly common terms such as “entity”, are not required to make claim language definite. As long as one of ordinary skill would understand what is meant, then the claim is definite. Such is the case here. Further, the Examiner’s ability to comprehend the term “entity” is strong evidence of definiteness.

Applicants respectfully reiterate (from Applicants’ previous response), for example, that **the Examiner’s ability to articulate clearly what the Examiner believes the scope of the claimed term to be (i.e., “‘entity’ could be a person or a machine”; Office Action, pg. 4, first paragraph), is the epitome of definiteness.** That the Examiner might prefer a term that the Examiner deems more precise is not adequate grounds for rejection. See, MPEP §2173.02 (“Some latitude in the manner of expression and the

aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire.”).

At least for these reasons, the Examiner has simply and entirely failed to establish a *prima facie* case for indefiniteness, and the §112, second paragraph grounds for rejection should therefore be withdrawn with respect to claim **18**, as re-written in independent for to incorporate the limitations of claim **1** (now cancelled).

C. 35 U.S.C. §102(e) - Walker

Claims **1-17** and **19-26** stand rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Walker. This ground for rejection is moot, as claims **1-17** and **19-26** are cancelled herein. These claims are cancelled herein solely to advance prosecution and Applicants hereby reserve the right to pursue the subject matter of claims **1-17** and **19-26** in one or more continuing applications.

IV. New Claims

New claims **27-75** are believed to be patentable at least as described herein. Further, Applicants respectfully note that no evidence has yet been offered that there is any teaching or suggestion of at least:

(i) *storing, after the receiving of the indication of the monitoring rule for the site, an indication of the association between the monitoring rule and the site* (claims **27-51**);

(ii) *requesting, after the receiving of the request to review images of objects, that the remote viewer provide an indication of whether the image of the object matches a reference image of a particular object* (claims **52-60**);

(iii) *requesting that each remote viewer of the plurality of remote viewers provide an indication of whether the image of the object matches a reference image of a particular object* (claim **61**); or

(iv) *providing, based at least in part on the indication that the emergency exists at the location associated with the data, and to one or more humans at the location, real-time instructions associated with the emergency* (claims **62-75**).

V. Conclusion

At least for the foregoing reasons, it is submitted that all pending claims are now in condition for allowance, and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remain any questions regarding the present application, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number (203) 461-7017 or via e-mail at cfincham@walkerdigital.com, upon the Examiner's convenience.

VI. Fees and Petition for Extension of Time to Respond

Enclosed herewith is the surcharge fee of **\$1,200** for filing twenty-four (24) total claims over the twenty-six (26) total claims previously paid for.

While no other fees are believed to be due at this time, please charge any fees that may be required for this Amendment to Deposit Account No. 50-0271. Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this Amendment timely, and please charge any fee for such an extension to Deposit Account No. 50-0271.

Respectfully submitted,

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